

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 3:10-CR-00111-07

BARRY ADKINS

DEFENDANT BARRY ADKINS SECOND MOTION FOR A NEW TRIAL

Comes now the defendant, Barry Adkins, by and through his undersigned counsel, and pursuant to Rule 33 of the Federal Rules of Criminal Procedure moves this Court to grant him a new trial based on newly discovered evidence.

Mr. Adkins, on October 5, 2011, filed a motion for a new trial (document 468) based on this Court's ruling allowing Martha Brown to testify at the defendant's trial.

The gist of Ms. Brown's testimony was that Mr. Adkins "would make lots of deposits, I mean just with money that smelled." Ms. Brown further testified that "I probably dealt with him about seven or eight times." She further testified that the deposits were "cash deposits". She further testified that the amount of cash deposits were anywhere from "two to four thousand dollars." While testifying about the money Ms. Brown stated "it just smelled really bad." Ms. Brown also testified on direct examination that the deposits that she received from Mr. Adkins that smelled like marijuana "was over three years ago."

Due to the late disclosure of the witness Martha Brown the defendant had no time to obtain documents that would contradict Ms. Brown's testimony.

After the trial Mr. Adkins, through a slow, laborious process was able to obtain banking records from Chase Bank that he feels shows Ms. Brown's testimony was not accurate. Mr. Adkins has attached as exhibit 1 to this motion his affidavit setting forth the efforts he took to

obtain bank records from Chase Bank. The bank records collected by Mr. Adkins are attached as exhibit 2 and a summary of the bank records is attached as exhibit 3.

Counsel for the defendant has attached his affidavit as exhibit 4 in support of this motion.

WHEREFORE the defendant respectfully requests that, pursuant to Rule 33 of Federal Rules of Criminal Procedure, he be granted a new trial.

Respectfully submitted,

Barry Adkins
By Counsel

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CERTIFICATE OF SERVICE

The undersigned does hereby certifies that on the 21ST day of February, 2011, the foregoing **DEFENDANT BARRY ADKINS SECOND MOTION FOR A NEW TRIAL** was filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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